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C O N F I D E N T I A L ALMATY 000545

SIPDIS

DEPARTMENT FOR EUR/CACEN (JMUDGE), DRL/PHD (PDAVIES)

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TAGS: PHUM PGOV KZ POLITICAL

SUBJECT: KAZAKHSTAN: DEMOCRATIC CHOICE OF KAZAKHSTAN
LIQUIDATED

REF: A. ALMATY 166 AND PREVIOUS

1B. ALMATY 537

Classified By: POEC Chief Deborah Mennuti, reasons 1.4 (B) and (D).

11. (C) Summary: A February 9 ruling by an Almaty appeals court resulted in the liquidation of Democratic Choice of Kazakhstan (DCK) and raised serious questions about due process. Although the case can still be appealed to two higher levels of the courts, party leaders and lawyers are pessimistic about their prospects for success. We expect that at least some DCK leaders will eventually attempt to register a new party. End summary.

12. (SBU) In a February 9 ruling, the Almaty City Court upheld the ruling of the Almaty Interdistrict Economic Court to liquidate Democratic Choice of Kazakhstan (DCK) on charges of undermining the security of the state and fanning social hatred. The court ruled on both the issue of jurisdiction, rejecting DCK's argument that the case should be heard in the administrative courts, and the substance. The charges stemmed from a December 11 statement that described the September parliamentary elections as "rigged" and called on the public to exercise civil disobedience to remove President Nazarbayev's "family clan." Party head Assylbek Kozhakhmetov, head of the Opposition Coordination Council Zharmakhan Tuyakbay, Kazakhstan Human Rights Bureau head and lawyer Yevgeniy Zhovtis, and DCK lawyer Serik Musin represented the party at the hearing. The event attracted significant media coverage, including local BBC and New York Times stringers.

13. (C) POEC chief and PolFSN observed the hearing. Over a hundred DCK supporters (mostly elderly) wearing orange scarves packed the courtroom, occasionally interrupting proceedings. A handful were ejected for unruliness. The atmosphere in the courtroom was tense. The senior judge opened proceedings with a stern warning that anyone speaking out would be warned once and thrown out the second time. Kozhakhmetov was very provocative and combative in his exchanges with the judge, who at one point warned the DCK leader that he was "outside the bounds of the law." Of the numerous motions filed by DCK, the judge accepted only one, to admit two written expert opinions. The party was not allowed to call the expert witnesses it sought. The procurator called two, a philologist and a psychologist who had analyzed the December 11 statement and determined that it violated the law. The judge overruled more than half of the questions that DCK representatives sought to pose to these expert witnesses. After hearing motions and testimony from 14:30 until 19:40, the three-judge panel recessed to deliberate. They returned after thirty minutes and issued the ruling, prompting the DCK supporters to unfurl protest banners and chant "shame, shame."

14. (SBU) With this decision, the January 6 liquidation order formally went into effect. DCK no longer exists as a legal entity, and its regional branches are to be deregistered. We understand the phones at party headquarters have already been cut off. The liquidation commission appointed by the Almaty Interdistrict Economic Court was to have begun work immediately. Party leaders can now appeal the decision to a higher level ("nadzorniy") of the Almaty City Court for a technical review, and then to the Supreme Court.

15. (SBU) In a February 10 press conference, party leaders stated that they would file an appeal but were not optimistic about the results. Kozhakhmetov explained that they would appeal simply so that "afterward, no one can ask us why we didn't take it to the end." After the ruling was issued February 9, Zhovtis told POEC chief and PolFSN that he was very pessimistic about prospects for an appeal, given the hasty ruling of the Almaty City Court.

16. (C) Comment: The way the hearing was conducted confirmed earlier impressions that the case against DCK is politically motivated, and raised serious questions about due process. Post will remain in close contact with DCK leaders as they determine next steps. Given Kozhakhmetov's comments to DAS Kennedy on Feb. 5 (ref B) that liquidation could not get rid of DCK's supporters, we expect at least some elements of the

party to attempt to register as a new organization. End
comment.

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